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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Cheryl Sam, individually and on behalf of
the respective bankruptcy estate, et al.,

10 Plaintiffs,

11 v.

12 Ledbetter Law Firm, PLC, an Arizona
13 professional limited liability company, et
al.,

14 Defendants.
15

No. CV17-2814 PHX DGC

ORDER

16
17 Plaintiff Warfield filed a motion for mandatory remand under 28 U.S.C.
18 § 1334(c)(2) and for discretionary remand under 28 U.S.C. §§ 1334(c)(1) and 1452(b).¹
19 Doc. 8. After Defendants filed their response (Doc. 20), Plaintiff dropped his request for
20 mandatory remand and argued in favor of discretionary remand under 28 U.S.C.
21 § 1452(b) (Doc. 23). The Court discussed remand issues with the parties at the case
22 management conference on October 11, 2017. The Court set a litigation schedule at the
23 conference and took the motion to remand under advisement. After considering the
24 motion, the discussion at the conference, and other documents in this case, the Court
25 concludes that remand is appropriate.

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27 ¹ The parties agreed at the October 11, 2017 case management conference that the
28 proper Plaintiff in this case, if any, is Paul Warfield, Bankruptcy Trustee. The Court
therefore will refer to "Plaintiff" throughout this order even though some of the
arguments have been made on behalf of "Plaintiffs."

1 **A. The Nature of this Case.**

2 This case asserts four claims under Arizona state law: breach of contract against
3 State Farm, bad faith against State Farm, malpractice against Ledbetter, and aiding and
4 abetting bad faith against Ledbetter. Doc. 1. This case includes several challenging
5 questions of state law: whether a cause of action for breach of an insuring clause can
6 accrue before entry of a judgment against the insured (Doc. 7 at 4); whether Plaintiff's
7 bad faith claim is barred by the final judgment rule (*id.* at 5); whether the state law claims
8 accrued before the insureds filed for bankruptcy (*id.* at 7; Doc. 18 at 5-7); and whether
9 Plaintiff has pled a viable claim for aiding and abetting bad faith (Doc. 17 at 3-4).
10 Because these issues are raised in Defendants' motions to dismiss, they will need to be
11 addressed early in the litigation.

12 It is also true that this case appears to contain a challenging issue related to
13 bankruptcy law: if Plaintiff can assert the claims in the complaint, what is their value? Is
14 it zero because the insureds have received a discharge in bankruptcy, or is it the value of
15 the exposure to which the insureds were subjected by Defendants' alleged wrongdoing?
16 If the case remains in this Court, the parties seem to suggest that this issue should be
17 referred to bankruptcy court for decision. For several reasons, the Court is not inclined to
18 make such a referral: the case came from state court, not bankruptcy court; this issue
19 appears to be novel, and even if the Court could refer it to bankruptcy court, the parties
20 likely would seek to re-litigate it in this Court; the issue is closely tied to the state law
21 claims in this case, when the claims accrued, and how their damages are to be measured –
22 issues better resolved by Arizona state courts; and, for case management purposes, the
23 Court would not be inclined to split this case and send a portion of this case to
24 bankruptcy court while retaining related state law issues.

25 **B. Discretionary Remand.**

26 Defendants removed this case under 28 U.S.C. § 1334. Doc. 1. Congress has
27 provided that “[t]he court to which such claim or cause of action is removed may remand
28 such claim or cause of action on any equitable ground.” 28 U.S.C. § 1452(b). The Ninth

1 Circuit Bankruptcy Appellate Panel notes that “any equitable ground” is unusually broad
2 and “subsumes and reaches beyond all of the reasons for remand under non-bankruptcy
3 removal statutes.” *In re McCarthy*, 230 B.R. 414, 417 (9th Cir. B.A.P. 1999).

4 Courts in this district consider the following factors in analyzing equitable remand
5 under § 1452(b): judicial economy, the presence of substantial questions of state law,
6 comity, and the possibility of inconsistent factual findings. *In re Davis Chevrolet, Inc.*,
7 282 B.R. 674, 684 (Bankr. D. Ariz. 2002) (citing *In re Med. Lab. Mgmt. Consultants*, 931
8 F. Supp. 1487, 1493 (D. Ariz. 1996)). Applying these factors, the Court concludes that
9 remand is warranted. This case contains substantial questions of state law, and comity
10 would be furthered by remand because at least one of those questions appears to be a
11 novel issue under Arizona law – whether a cause of action for breach of an insuring
12 clause can accrue before entry of a judgment against the insured. *See* State Farm’s
13 Motion to Dismiss, Doc. 7 at 4 (citing Minnesota law). Such a question is best addressed
14 by state trial and appellate courts rather than this Court. In addition, because both this
15 Court and the state court would need to resolve the bankruptcy-related issue identified
16 above, judicial economy would not be furthered by keeping the case here. The final
17 factor – possible inconsistent findings of fact – is not relevant because there is only one
18 proceeding that raises these claims.

19 The parties address several additional factors that may be considered in the
20 remand analysis:

21 (1) the effect or lack thereof on the efficient administration of the estate if
22 the Court recommends [remand or] abstention; (2) the extent to which state
23 law issues predominate over bankruptcy issues; (3) difficult or unsettled
24 nature of applicable law; (4) presence of related proceedings commenced in
25 state court or other non-bankruptcy proceeding; (5) jurisdictional basis, if
26 any, other than § 1334; (6) degree of relatedness or remoteness of
27 proceeding to main bankruptcy case; (7) the substance rather than the form
28 of an asserted core proceeding; (8) the feasibility of severing state law
claims from core bankruptcy matters to allow judgments to be entered in
state court with enforcement left to the bankruptcy court; (9) the burden on
the bankruptcy court’s docket; (10) the likelihood that the commencement

1 of the proceeding in bankruptcy court involves forum shopping by one of
2 the parties; (11) the existence of a right to a jury trial; (12) the presence in
3 the proceeding of nondebtor parties; (13) comity; and (14) the possibility of
prejudice to other parties in the action.


4 *In re Cedar Funding*, 419 B.R. 807, 820 n.18 (9th Cir. B.A.P. 2009).

5 Several of these factors favor remand: important state law issues predominate over
6 bankruptcy issues (factor 2); at least one of the state law issues appears to be unsettled
7 (factor 3); there is no jurisdictional basis in this Court other than § 1334 (factor 5); it is
8 not feasible to sever state law claims from the bankruptcy issues (factor 8); this case
9 includes several non-debtor parties (factor 12); and comity (factor 13), for reasons
10 mentioned above. Other factors in the list do not weigh in favor of retaining jurisdiction.
11 Although Defendants argue that a number of issues must be resolved by the bankruptcy
12 court presiding over the insureds' bankruptcy (administration of the estate's assets,
13 determination of what creditors receive what amounts, approval of any contingent fee
14 received by Plaintiff's counsel), this is true whether the case is pending before this Court
15 or the state court.

16 Considering all of the relevant factors, the Court concludes that remand is
17 warranted.

18 **IT IS ORDERED** that Plaintiff's motion to remand (Doc. 8) is **granted**. The
19 Clerk shall remand this case to Maricopa County Superior Court.

20 Dated this 12th day of October, 2017.

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25 David G. Campbell
26 United States District Judge
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